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LESAVICH HIGH-TECH LAW GROUP, P.C.			KIM, PAUL	
SUITE 325			ART UNIT	PAPER NUMBER
39 S. LASALLE STREET			2161	
CHICAGO, IL 60603				

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/797,857	FORDHAM, MATTHEW A.
Examiner	Art Unit	
Paul Kim	2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 February 2007.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-13 and 23-27 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-13 and 23-27 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


SAM RIMELL
 PRIMARY EXAMINER

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application

6) Other: _____

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DETAILED ACTION

1. This Office action is responsive to the following communication: Amendment filed on 28 February 2007.
2. Claims 1-13 and 23-25 are pending and present for examination. Claims 1 and 23 are independent.

Response to Amendment

3. Claims 14-22 have been cancelled.
4. Claims 26 and 27 have been added.
5. No claims have been amended.

Priority

6. As per the objection to the Specification, Applicant's amendment is acknowledged. Accordingly, the objection has been withdrawn.

Double Patenting

7. As per the Double Patent rejection, Applicant's Preliminary Amendment filed on 10 March 2004 is acknowledged. Accordingly, the rejection has been withdrawn.

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
9. **Claims 1-13** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed toward "a method for creating a vertical search engine"

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and are non-statutory because they do not encompass tangible subject matter and/or embodiments which fall within a statutory category.

The claims make no mention of a tangible medium wherein existing code may be processed to perform the recited steps in the claims. See State Street, 149 F.3d at 1373, 47 USPQ2d at 1601-02.

MPEP 2106. "The claimed invention as a whole must accomplish a practical application. That is, it must produce a 'useful, concrete and tangible result' " (emphasis added).

Additionally, it is noted that the limitations of the claims may be considered to be software, per se, since the claims fail to be integrated into a computer hardware system for execution. Since claim simply recites that the instructions are "for causing a process to execute the steps of the method" and fails to claim a process where an integrated computer hardware system is executing the computer program's instructions, the claim fails to qualify as a process claim and is considered nonstatutory functional descriptive material.

10. **Claims 26-27** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed toward "a method for creating a vertical search engine" and are non-statutory because they do not encompass tangible subject matter and/or embodiments which fall within a statutory category.

The claims make no mention of a tangible medium wherein existing code may be processed to perform the recited steps in the claims. See State Street, 149 F.3d at 1373, 47 USPQ2d at 1601-02. MPEP 2106. "The claimed invention as a whole must accomplish a practical application. That is, it must produce a 'useful, concrete and tangible result' " (emphasis added).

Additionally, it is noted that the limitations of the claims may be considered to be software, per se, since the claims fail to be integrated into a computer hardware system for execution. Since claim simply recites that the instructions are "for causing a process to execute the steps of the method" and fails to claim a process where an integrated computer hardware system is executing the computer program's instructions, the claim fails to qualify as a process claim and is considered nonstatutory functional descriptive material.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. **Claims 1, 2, 4 and 23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Berstis (U.S. Patent No. 6,490,575, hereinafter referred to as BERSTIS), filed on 6 December 1999, and issued on 3 December 2002, in view of Brady et al (U.S. Patent No. 6,463,430, hereinafter referred to as BRADY), filed on 10 July 2000, and issued on 8 October 2002.

13. **As per independent claims 1 and 23**, BERSTIS, in combination with BRADY, discloses:

A method for creating a vertical search engine, comprising:

receiving a list of a plurality of keywords to be used for the vertical search engine on a network device {See BRADY, C2:L17-39, wherein this reads over "Vertical Portals"}, wherein the list of keywords includes general and specific keywords for a selected subject {See BERSTIS, C10:L49-52, wherein this reads over "lists of keywords may be periodically updated automatically"};

processing the list of plurality of keywords to create a refined list of keywords, wherein the processing includes adding, subtracting or modifying automatically the list of plurality of keywords {See BERSTIS, C10:L49-52, wherein this reads over "lists of keywords may be periodically updated automatically"};

creating a plurality of first index files associated with a plurality of first data files by checking a plurality of domain names from a plurality of domain name files associated with a domain name system for a computer network {See BERSTIS, C8:L52-55, wherein this reads over "such resultant data includes the identity and network addresses of network sites containing one or more of the searched keywords"; and C9:L4-7, wherein this reads over "each of local sites have an associated local database which maintains a list of keywords compiled from within each site"},

wherein the plurality of first index files include a plurality of pointers to the associated data files {See BERSTIS, C9:L12-16, wherein this reads over "local indices include processing means for indexing the current keyword lists such that each of the keywords is associated with one or more of the multiple Web pages within each respective site; and C10:L43-46, wherein this reads over "such indexing entails associating each keyword with the network address of its local site or server"}, and

wherein the plurality of first data files include a plurality of entries including electronic information extracted from a plurality of web-sites associated with a plurality of active domain names from the plurality of domain name files

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{See BERSTIS, C10:L43-46, wherein this reads over "such indexing entails associating each keyword with the network address of its local site or server"};

creating a plurality of second index files with associated plurality of second data files by searching the plurality of first index files for keywords from the refined list of keywords {See BERSTIS, C4:L57-61, wherein this reads over "[a] global, top-level search engine maintains and periodically updates its own master index; and C10:L49-52, wherein this reads over "lists of keywords may be periodically updated automatically"},

wherein the plurality of second index files include a plurality of pointers to the associated plurality of second data files {See BERSTIS, C9:L12-16, wherein this reads over "local indices include processing means for indexing the current keyword lists such that each of the keywords is associated with one or more of the multiple Web pages within each respective site; and C10:L43-46, wherein this reads over "such indexing entails associating each keyword with the network address of its local site or server"}, and

wherein the plurality of second data files include a plurality of entries including electronic information extracted from a plurality of web-sites associated with the plurality of active domain names for keywords from the refined list of keywords {See BERSTIS, C10:L43-46, wherein this reads over "such indexing entails associating each keyword with the network address of its local site or server"};

verifying that entries in the plurality of second index files are appropriate for the selected subject;

creating a final index from the plurality of entries first index {See BERSTIS, C4:L57-59, wherein this reads over "[a] global, top-level search engine maintains and periodically updates its own master index"}, and

making a vortal accessible on another network device via the computer network for the selected subject using the final index.

It would have been obvious to one of ordinary skill in the art at the time the invention was created to verify that the entries in the second index files fall within the selected subject for the vortal. Additionally, it would have been obvious to one of ordinary skill in the art at the time the invention was created to have the vortal available for access by another network device via a general computer network.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the inventions suggested by BERSTIS and BRADY.

One of ordinary skill in the art would have been motivated to do this modification so that in creating a vertical search engine, keywords are processed to be included in a final index such that the final index correlates to a specific subject or topic.

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14. **As per dependent claim 2, BERSTIS, in combination with BRADY, discloses:**

The method of Claim 1 further comprising a computer readable medium having stored therein instructions for causing a processor to execute the steps of the method {See BERSTIS, C11:L23-26, wherein this reads over "implementations as a computer system programmed to execute the method or methods described herein, and as a program product"}.

15. **As per dependent claim 4, BERSTIS, in combination with BRADY, discloses:**

The method of Claim 1 wherein the plurality of entries including electronic information extracted from a plurality of web-sites associated with a plurality of active domain names from the plurality of domain name files include a title, description, a uniform resource locator, or a pre-determined amount of electronic content associated with a web-site associated with an active domain name {See BERSTIS, C4:L62-65, wherein this reads over "the global search engine would retrieve only the Internet Protocol (IP) address of the local sites associated with word-to-page links relating to the searched words"}.

16. **Claims 3, 24 and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over BERSTIS, in view of BRADY, and in further view of Admitted prior art.

BERTIS and BRADY teach the limitations of claims 1, 2, 4 and 23 for the reasons stated above.

BERTIS and BRADY differ from the claimed invention in that they fail to specifically disclose that the DNS for the Internet is included in the DNS for the network (claims 3 and 25).

BERTIS and BRADY differ from the claimed invention in that they fail to specifically disclose that the opening of a .COM, .EDU, .GOV, .MIL, .NET or .ORG top-level domain name file (claim 24).

17. **As per dependent claims 3 and 25,** it would have been obvious to one of ordinary skill in the art at the time the invention was claimed to include the Domain Names System (or "DNS") for the Internet in the DNS for the network. Because Applicant failed to provide an adequate response to Examiner's Official Notice in the prior Office action, said failure deems the aforementioned obviousness statement to be taken as admitted prior art.

18. **As per dependent claim 24,** it would have been obvious to one of ordinary skill in the art at the time the invention was claimed to hat the name files associated with a DNS would include opening a .COM, .EDU, .GOV, .MIL, .NET or .ORG top-level domain name file associated with the DNS of the Internet. Because Applicant failed to provide an adequate response to Examiner's Official Notice in the

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prior Office action, said failure deems the aforementioned obviousness statement to be taken as admitted prior art.

19. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over BERSTIS, in view of BRADY, and in further view Sullivan et al (U.S. Patent No. 5,956,711, hereinafter referred to as SULLIVAN), filed on 16 January 1997, and issued on 21 September 1999.

BERTIS and BRADY teach the limitations of claims 1, 2, 4 and 23 for the reasons stated above.

BERTIS and BRADY differ from the claimed invention in that they fail to specifically disclose the method of eliminating generic keywords and adding synonyms and modified spellings of keywords to the list (claim 5).

20. **As per dependent claim 5**, BRADY, in combination with BERSTIS and SULLIVAN, discloses:

The method of Claim 1 wherein the processing step includes:

eliminating keywords that are too generic or have multiple meanings {See SULLIVAN, C4:L4-7, wherein this reads over "[a] restricted keyword list is accessed by the keyword translator which compares the user-entered input with a restricted list of acceptable keywords and acceptable synonyms"};

modifying keywords by adding alternative spellings or additional words {See SULLIVAN, C6:L1-5, wherein this reads over "even one spelling of the same word (e.g., "color" in the United States, v. "colour" in the United Kingdom")}; and

adding automatically synonyms for keywords to the list of plurality of keywords to create the refined list of keywords {See SULLIVAN, C4:L7-10, wherein this reads over "[i]f the input is not on the list, but it is a synonym for a keyword on the list, then the keyword is substituted before storing the information"}.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the inventions suggested by BERSTIS, BRADY and SULLIVAN.

One of ordinary skill in the art would have been motivated to do this modification so that certain keywords are added or deleted according to their generic nature or similarity.

Response to Arguments

21. Applicant's arguments filed 28 February 2007 have been fully considered but they are not persuasive.

a. Rejections under 35 U.S.C. 101

Applicant asserts the argument that because "the parent application of the pending application was granted a patent for a vertical search engine by the U.S. Patent Office, as U.S. Patent No. 6,714,934," the pending application contains a method and a system that is "obviously statutory subject matter." Very respectfully, the Examiner will not express any opinion nor comment on the validity and patentability of an issued Patent. Instead, the Applicant should review MPEP 1701 which state the following in part:

Likewise, employees are cautioned against answering any inquiry concerning any entry in the patent or reexamination file, including the extent of the field of search and any entry relating thereto.

Practitioners shall not make improper inquiries of members of the patent examining corps. Inquiries from members of the public relating to the matters discussed above must of necessity be refused and such refusal should not be considered discourteous or an expression of opinion as to validity, patentability or enforceability. (emphasis added).

Secondly, Applicant asserts the argument that the State Street Bank case and the AT&T case no longer require a tangible medium for a software invention. The Examiner respectfully disagrees in that State Street specifically states that "the claimed invention as a whole must accomplish a practical application. That is, it must produce a 'useful, concrete and tangible result' " See State Street, 149 F.3d at 1373, 47 USPQ2d at 1601-02. MPEP 2106. In this present application, claims 1 and 3-13 fail to recite any tangible computer readable medium upon which the instructions for execution the method steps may exist, and more importantly fail to recite a "useful, concrete and tangible result". Additionally, per Applicant's admission that the present application is for a software invention, the Examiner notes that the method claims may be considered to be software, *per se*, since the claims fail to be integrated into a computer hardware system for execution. Therefore, since the claims simply recite steps of implementation, said claims constitute non-statutory subject matter by failing to fall within a statutory category. That

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is, while claim 1 may recite method steps such as "receiving a list of a plurality of keywords to be used for the vertical search engine on a network device" and "making a vortal accessible on another network device via the computer network for the selected subject using the final index," said method steps only present an intended use and no integration of a computer hardware system for execution is presented. Since a computer program is merely a set of instructions capable of being executed by a program, the computer program itself is not a process and is nonstatutory functional descriptive material.

As to the assertion that "the Examiner should review the holding of these cases and the corresponding MPEP sections 2106-2108," the Examiner very respectfully directs the Applicant to review the Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility (hereinafter referred to as "Interim Guidelines") published by the USPTO. The Applicant has clearly misapplied both case law and patent rules which are clearly stated for software inventions as clarified by the Interim Guidelines.

Thirdly, Applicant asserts the argument that claim 2 "does include a computer readable medium" (See Amendment, page 17). The Examiner agrees. However, for purposes of clarification, it is noted that the rejection of claim 2 under 35 U.S.C. 101 is sustained in that claim 2 fails to remedy the non-statutory subject matter deficiencies of claim 1. That is, while claim 2 recites "[t]he method of Claim 1 further comprising a computer readable medium having stored therein instructions for causing a processor to execute the steps of the method," it is noted that the limitations of said claim fail to recite a "useful, concrete and tangible result." That is, the limitations of claim 2 may be considered to be software, *per se*, since the claims fail to be integrated into a computer hardware system for execution. Since claim simply recites that the instructions are "for causing a process to execute the steps of the method" and fails to claim a process where an integrated computer hardware system is executing the computer program's instructions, the claim fails to qualify as a process claim and is considered nonstatutory functional descriptive material.

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Additionally, Applicant asserts the argument that the Examiner has asserted "an erroneous statement" and has "a misunderstanding of the holding of the State Street Bank and AT&T cases" (See Amendment, page 17). Once again, Examiner directs Applicant to the Interim Guidelines and to further review the holdings of State Street Bank and AT&T and other relevant patent rules. While Applicant asserts that the vertical search engine claimed by the Applicant "are some of the most innovative and important tools created for the Internet," the Examiner notes that the level of innovation and importance are not provided weight in the examination and review of patent applications (See Amendment page 17). Furthermore, Examiner, very respectfully, disagrees with Applicant's assertion that "[t]he Internet would not be useable without search engines" in that search engines are not necessary to the operability of the Internet (See Amendment, page 17). While the Examiner agrees with Applicant's assertion that search results may constituted "useful, concrete and tangible result," it is noted that the features upon which applicant relies (i.e., search results) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Additionally, Applicant asserts the argument that if claims 6 and 13 are allowable, that said claims "must also be statutory" (See Amendment, page 17). While claims 6-13 have been indicated as being allowable but objected to as being dependent upon a rejected base claim, the Examiner notes that in order for said claims to be allowable, the rejections under 35 U.S.C. 101 must also be overcome. Where the 35 U.S.C. 101 rejections have presently not been overcome, the Examiner maintains the objections to claims 6-13.

Lastly, Applicant asserts that "[t]he Section 101 rejection is clearly a mis-application of U.S. Patent Law and Rules and must be immediately withdrawn." The Examiner, very respectfully, disagrees and the rejections of the claims will not be immediately withdrawn as the Examiner has clearly and properly applied U.S. Patent Law and Rules. Furthermore, the

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Examiner once again directs Applicant to review the Interim Guidelines, and the case law and relevant Patent Rules contained therein so that Applicant may be able to ascertain a better understanding of the legal requirements for statutory subject matter with regard to computer-related inventions.

Therefore, for all the reasons stated above, the rejections of claims 1-13 are sustained under 35 U.S.C. 101.

b. Rejections under 35 U.S.C. 103 – First Section

Applicant asserts the argument that "the Examiner has not established a prima facie case of obviousness in violation of the holding of *In re Vaeck* and *In re Royka*" (See Amendment, page 19). The Examiner respectfully disagrees in that the Examiner has established a prima facie case of obviousness.

It is asserted by Applicant that the Examiner "tried to overcome his failings by (sic) stating the missing claim elements are obvious" (See Amendment, page 19). Applicant is directed to column 22, lines 17-37 of Brady et al which discloses that "[s]uch assignments can then be reviewed by a human operator for reclassification." That is, wherein the assignment is of a web page to a certain taxonomy category. Accordingly, the Examiner reasserts the statement that "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was created to verify that the entries in the second index files are appropriate for the selected subject" (See Amendment, page 19).

Additionally, Applicant asserts the argument that the Examiner has failed in establishing a prima facie case of obviousness in that the Examiner has failed in finding prior art that satisfies the method step of "making a portal accessible on another network device via a general computer network" (See Amendment, page 20). Applicant is directed to the "Background of Invention," specifically column 2, lines 17-47, of Brady et al which discloses "[t]he commercial success of portals, such as ZDNET and eTrade." Additionally, the cited prior art further discloses the use of portals in the Internet environment, and the World Wide Web, as well as "the

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increasing number of vortals and commercial enterprises on the web" (See Brady et al, C2:L43-47). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made, for said reasons above, to make a vortal accessible on another network device (i.e. another computer on the Internet or Intranet) via the computer network (i.e. the Internet). One of ordinary skill in the art would be able to clearly appreciate the prior art disclosure by Brady et al and Berstis and apply said prior art in such a manner that the method steps of the present invention are fully and completely read upon.

For purposes of clarification, the Examiner expressly disagrees with Applicant's assertion that the Examiner has simply claimed elements that were not found in the combination of references as obvious to one of ordinary skill in the art. As cited above, the contested method steps have been fully disclosed by the prior art, and the Examiner remarks that it is the responsibility of the Applicant to review any and all cited prior art before pointing out deficiencies in a rejection and before making assertions that the Examiner has violated case law. For the reasons stated above, the rejections under 35 U.S.C. are deemed clearly proper and will not be withdrawn but instead sustained as a *prima facie* case of obviousness has been established.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both of the inventions in the cited prior art of Brady et al and Berstis are applicable to communication networks such as the Internet and Intranet. While Applicant asserts that "[s]ince Brady requires use of a spider or crawler and Bertsis in part was created to eliminate the use of a spider or crawler by requiring use of local search engines, combining Brady and Berstis makes Bertsis unsatisfactory for one of its intended purposes of eliminating use of spiders and

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crawlers," the Examiner disagrees (See Amendment, page 23). It is noted that Brady discloses a system wherein documents are process to create a database that can be search to identify relevant documents. Furthermore, while Brady discloses that "the term, 'network of documents,' refers to a body or collection of documents, such as the Internet, the World Wide Web, local area networks (LANs), intranets and the like" (See Brady, C3:L56-59), Berstis discloses that "another object of the invention [is] to provide an improved method and system for efficiently searching a distributed, hierarchical network database, such as the World Wide Web (WWW)" (See Berstis, C3:L45-48). Accordingly, it would have been obvious to one ordinary skill in the art to comprehend and recognize that the disclosed inventions do not teach away from each other but are complementary in nature by improving on search efficiency. Applicant is further advised that one of ordinary skill in the art would readily acknowledge that the terms "spider" and "crawler" are directed to automated processes which index data from a Web site or other data on a network. In fact, one of ordinary skill in the art could comprehend that search engines widely use "spidering" as a means of providing up-to-date data from the network, be it a local network or the Internet. Therefore, the Examiner notes that the cited prior art, in combination, teach and disclose the limitations of the present invention, properly rendering the claims as *prima facie* obvious.

Therefore, for the reasons stated above, the rejections of claims 1 and 23 are sustained under 35 U.S.C. 103(a).

As per the rejections of claims 2 and 4, the aforementioned reasons for the rejections of claims 1 and 23 under 35 U.S.C. 103(a) are incorporated herein by reference.

c. Rejections under 35 U.S.C. 103 – Second Section

Applicant asserts the argument that the Examiner's Official Notice is deficient in that the Examiner has not provided documentary evidence of proof for the Official Notice. Because Applicant has inadequately traversed the Official Notice and is therefore deficient, no document evidence shall be provided by the Examiner. Very respectfully, the Applicant should review MPEP

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2144.03, which address the topic of Official Notice and clearly state the criteria for traversing an Official Notice. MPEP 2144.03, Part C states the following in part:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. (emphasis added)

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. (emphasis added).

Accordingly, because of Applicant's inadequate traversal, it is noted that the rejections of claims 3 and 24-25 have been modified to indicate that the limitations of the claim, which are well-known in the art, are to be taken as admitted prior art.

d. Rejections under 35 U.S.C. 103 – Second Section

As per the rejection of claim 5, Applicant's arguments for said claim are incorporated by reference. Accordingly, the aforementioned reasons for the rejections of claims 1 and 23 under 35 U.S.C. 103(a) are incorporated herein by reference.

Conclusion

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing

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date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Kim whose telephone number is (571) 272-2737. The examiner can normally be reached on M-F, 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu Mofiz can be reached on (571) 272-4080. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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